

**U.S. Department of Justice****Environment and Natural Resources Division**

Environmental Enforcement Section
P.O. Box 7611
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November 7, 2005

EPA Region 5 Records Ctr.



299566

Via FEDEX

Ms. Laura A. Briggs
Clerk of Court
United States District Court
Southern District of Indiana
105 Birch Bayh Federal Bldg. and
United States Courthouse
46 East Ohio Street
Indianapolis, IN 46204

Re: United States and State of Indiana v. The Environmental
Conservation and Chemical Corporation, et. al
Case No. IP 83-1419-C-M/S

Dear Ms. Briggs,

Please find enclosed for filing an original Notice of Appearance, Motion to Approve Stipulation and Order Modifying Consent Decree and Memorandum in support thereof, proposed Stipulation and Order, and Certificate of Service in the above referenced matter.

I request that a file-stamped copy of this filing be sent to me and have included a copy of the filing and a pre-stamped envelope for your convenience. In the event you have any questions regarding this matter, please contact me at (202) 305-0232. Thank you for your assistance.

Sincerely,

Renita Y. Ford
Renita Y. Ford
Trial Attorney

cc: Thomas Krueger, Esq., U.S. Environmental Protection Agency
Timothy Junk, Esq., Office of the Attorney General for the State of Indiana
Norman Bernstein, Esq., Trustees of the Envirochem Trust Fund, on behalf of the Settling Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,
and STATE OF INDIANA,

Plaintiffs,

v.

THE ENVIRONMENTAL
CONSERVATION AND CHEMICAL
CORPORATION, et al.,

Defendants.

Civil Action No. IP 83-1419-C-M/S

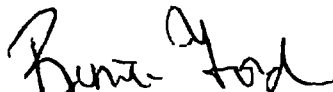
NOTICE OF APPEARANCE

The United States, on behalf of the United States Environmental Protection Agency, hereby requests that the Clerk of Court enter the appearance of Renita Y. Ford in the above-captioned matter. Copies of all notices and pleadings are requested to be sent to the following address:

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Tel.: (202) 305-0232
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Email: renita.ford@usdoj.gov

Respectfully submitted,

KELLY A. JOHNSON
Acting Assistant Attorney General



RENITA Y. FORD
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice

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Southern District of Indiana

CHARLES GOODLOE
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Indianapolis, Indiana 46204
(317) 226-6333

Of Counsel:

Thomas Krueger
Assistant Regional Counsel
U.S. Environmental Protection Agency
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77 West Jackson Blvd.
Chicago, IL 60604

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
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UNITED STATES OF AMERICA
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v.

THE ENVIRONMENTAL
CONSERVATION AND CHEMICAL
CORPORATION, et al.,

Defendants.

Civil Action No. IP 83-1419-C-M/S

MOTION TO APPROVE STIPULATION AND ORDER
MODIFYING CONSENT DECREE AND MEMORANDUM IN SUPPORT THEREOF

Plaintiff, the United States of America, by and through the undersigned counsel, respectfully moves this Court to approve the proposed Stipulation and Order Modifying the Consent Decree in the above-referenced matter. In support of this motion, Plaintiff states as follows:

1. On September 10, 1991, this Court entered a Consent Decree executed by the United States of America on behalf of the United States Environmental Protection Agency ("EPA"), the State of Indiana, and approximately 235 defendants in this action (the "Settling Defendants") (collectively referred to as the "Parties");

2. The Consent Decree provided for the design and implementation by certain Settling Defendants of a remedial action at the Environmental Conservation and Chemical Corporation Superfund Site (hereafter, the "ECC Site") near Zionsville, Indiana, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*;

3. The original remedial action was implemented in 2003, but failed to achieve the designated cleanup standards. Under the Consent Decree, the Settling Defendants were obligated to implement a contingent remedial action if the original remedy failed. The Parties recently agreed that a modification to the design of the contingent remedy is needed to ensure that cleanup standards are achieved.

4. The Parties have memorialized their agreement to modify the Consent Decree in the proposed Stipulation. The modification is set forth in Revised Exhibit A to the Consent Decree.

5. Modification of Revised Exhibit A to the Consent Decree will further the objectives of the decree.

6. If the modification to Revised Exhibit A to the Consent Decree is approved by early November 2005, Settling Defendants will begin construction of the modified remedy during the fall construction season. Otherwise, construction could be delayed until spring 2006 or later.

7. All parties to this action are signatories to the proposed Stipulation. The United States is not aware of any objections to this motion.

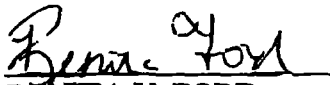
For the foregoing reasons, the United States respectfully requests that the Court approve the proposed Stipulation and Order modifying the Consent Decree.

Respectfully submitted,

UNITED STATES OF AMERICA

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division

Date: 11/9/05


RENITA Y. FORD

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Southern District of Indiana**

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OF COUNSEL:

**THOMAS KRUEGER
Associate Regional Counsel
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requisite cleanup standards have not been achieved, Settling Defendants agreed to implement the additional work specified in Revised Exhibit A to the Consent Decree, unless the parties agree otherwise;

WHEREAS, in March 2003, EPA determined, after consultation with the State, that the remedial action had not achieved the requisite cleanup standards;

WHEREAS, the additional work in Revised Exhibit A consists of, *inter alia*, the construction of a groundwater collection trench which included a membrane barrier to prevent contaminated water from migrating into or from a nearby drainage ditch;

WHEREAS, after numerous discussions, the parties have agreed that a thin barrier curtain wall would be more effective than a membrane barrier wall in preventing contaminated water from migrating into or from a nearby drainage ditch;

WHEREAS, EPA has approved, in consultation with the State, a design for the construction of a thin barrier curtain wall;

WHEREAS, the parties agree that modification of Revised Exhibit A to the Consent Decree to include the construction of a thin barrier curtain wall will further the objectives of the Consent Decree;

WHEREAS, the parties also agree that if the modification to Revised Exhibit A to the Consent Decree is approved by early November 2005, Settling Defendants will begin construction of the thin barrier curtain wall during the fall construction season;

WHEREAS, the parties further agree that if the modification to Revised Exhibit A to the Consent Decree is approved later than early November 2005, construction of the slurry barrier wall will be delayed until 2006;

WHEREFORE the Parties jointly request that the Court approve the proposed modification to Revised Exhibit A to the Consent Decree;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. Revised Exhibit A to the Consent Decree is modified to include the construction of a thin barrier curtain wall, as specified in the attached diagram, and the deletion of the collection trench membrane barrier; and
2. All other provisions of the Consent Decree, as amended, remain in full force and effect.

SO ORDERED THIS ____ DAY OF _____, 2005:

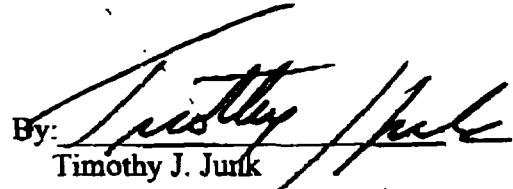
HON. LARRY J. MCKINNEY,
UNITED STATES DISTRICT COURT JUDGE

The undersigned party consents to the above-referenced modifications of Revised Exhibit A to the Consent Decree in *United States and State of Indiana v. The Environmental Conservation and Chemical Corporation, et al.*, (C. A. No. IP 83-1419-C M/S)

November 4, 2005

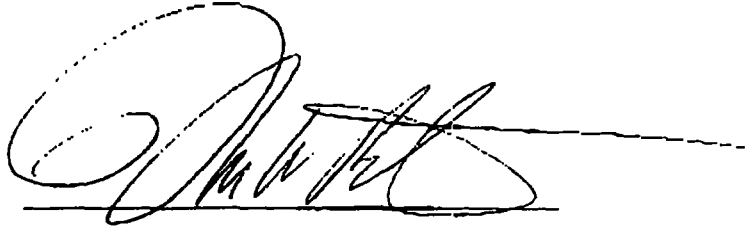
Respectfully submitted

STEVE CARTER
Indiana Attorney General
Attorney No. 4150-64

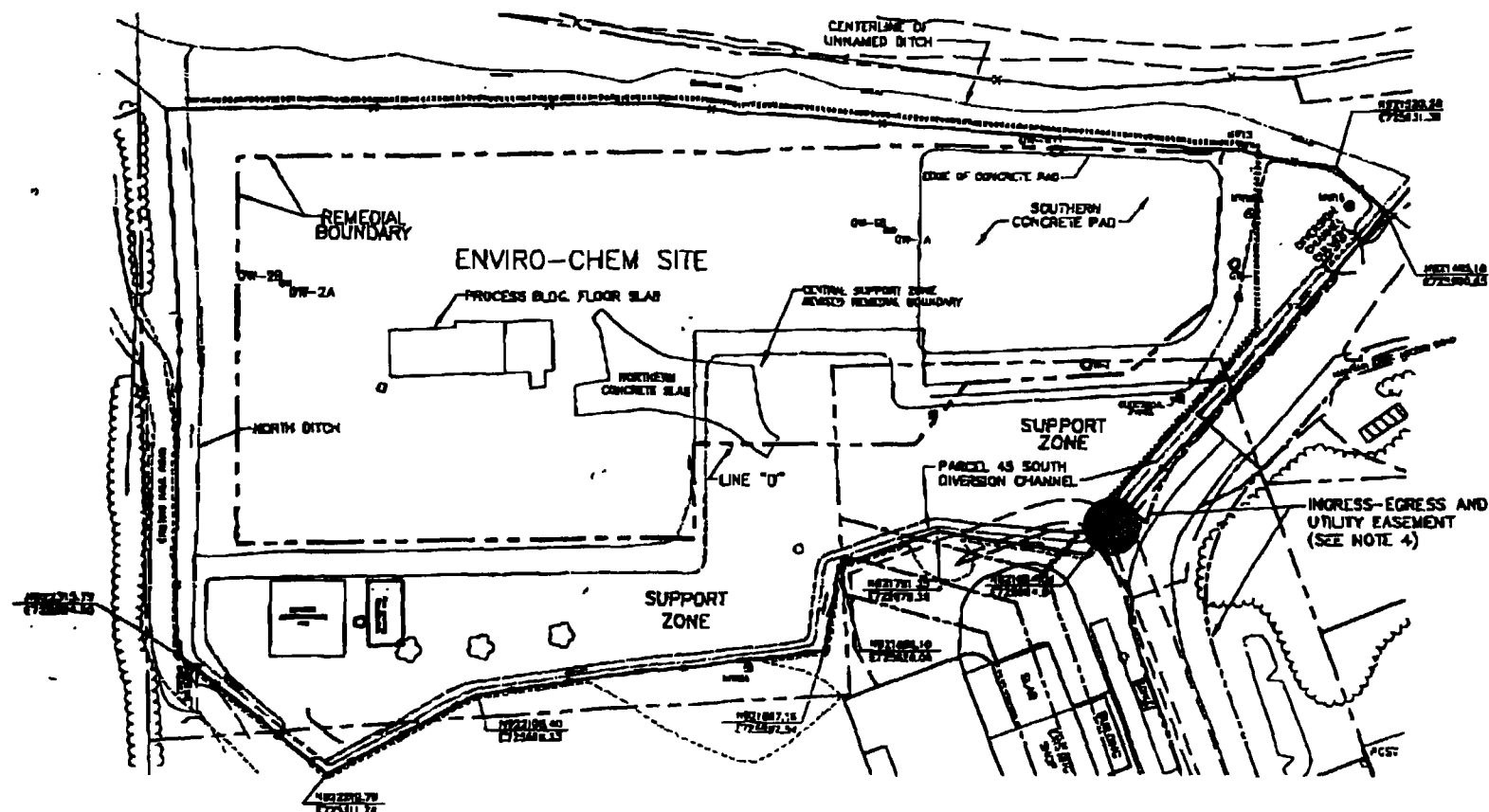
By: 
Timothy J. Junk
Deputy Attorney General
Atty. No. 5587-02

Office of the Attorney General
Indiana Government Center South
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402 W. Washington Street
Indianapolis, IN 46204-2770
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The undersigned party consents to the above-referenced modifications of Revised Exhibit A to the Consent Decree in *United States and State of Indiana v. The Environmental Conservation and Chemical Corporation, et al.*, (C. A. No. IP 83-1419-C M/S)

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by several loops and a long horizontal stroke extending to the right.

TRUSTEES OF THE ENVIROCHEM TRUST FUND, ON
BEHALF OF THE SETTLING DEFENDANTS



- NOTES:
- 1.) PROPERTY LINE LOCATIONS AND SURVEY DATA SUPPLIED BY: SCHNEIDER ENGINEERING CORP., INDIANAPOLIS, INDIANA.
 - 2.) COORDINATE GRID IS REFERENCED TO THE INDIANA STATE PLANE COORDINATE SYSTEM.
 - 3.) EXISTING SITE TOPOGRAPHY PROVIDED BY ADRIAN'S AERIAL SURVEY CORPORATION, AERIAL PHOTOS TAKEN JUNE, 1992. AS-BUILT TOPOGRAPHY WITHIN THE SUPPORT ZONE AND NORTH OF THE REMEDIAL BOUNDARY PROVIDED BY USE SURVEYING, FEBRUARY AND MARCH, 1994, WITH CORRECTIONS BY DEL. DECEMBER, 1994.
 - 4.) ENVIRO-CHEM ACCESS AND SETTLEMENT AGREEMENT, COMBET A, JULY 16, 1993.

- 5.) DEPTH OF TRENCH WILL VARY DEPENDING ON DEPTH OF GLACIAL TILL LAYER. BOTTOM OF TRENCH TO BE LOCATED -1'-0" ABOVE UNDERLYING GLACIAL SAND.
- 6.) INTERCEPTION TRENCH WILL BE LOCATED BETWEEN REMEDIAL AREA BOUNDARIES AND UNNAMED DITCHES.
- 7.) LOW POINT(S) FOR INTERCEPTION TRENCH WILL BE DETERMINED DURING FIELD INVESTIGATION WORK REQUIRED FOR CONSTRUCTION OF THE TRENCH. SAMPLE(S) AND ASSOCIATED PUMPING SYSTEM(S) WILL BE CONSTRUCTED AND INSTALLED BASED UPON LOCATION OF LOW POINT(S). THE LOCATION OF THE TRENCH SHOWN IS ILLUSTRATIVE ONLY.

FIGURE 3-1
SUBSURFACE WATER INTERCEPTION TRENCH
ENVIRO - CHEM SITE
ZIONSVILLE, INDIANA

SOURCE: SOA ENVIRONMENTAL DRAWING C-1, REVISION D DATED 11/10/94.

ERM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Notice of Appearance, Motion to Approve Stipulation and Order Modifying Consent Decree and Memorandum in Support Thereof, and proposed Stipulation and Order were served by first-class mail this ___ of November, 2005, on the following parties and representatives in United States and State of Indiana v. The Environmental Conservation and Chemical Corporation, et. al. Case No. IP 83-1419-C-M/S.

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